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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to:

Kobar v. Novartis Consumer
Health, Inc., No C02-420R

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND ALTERNATIVE MOTION TO
STRIKE MDL DEFENDANTS'
DAUBERT CHALLENGE AS TO
PLAINTIFF'S CLAIM

I. INTRODUCTION

Plaintiff filed a motion for reconsideration of the court's order denying plaintiff's motion to dismiss or, alternatively, for leave to move to strike defendants' motion to preclude expert testimony as it relates to her claim. Having considered plaintiff's motion, the court rules as follows:

II. BACKGROUND

On March 10, 2003, the court denied plaintiff's motion to dismiss. Plaintiff sought dismissal without prejudice so that she could pursue all of her claims in a pending state court action. The court denied the motion upon finding that dismissal would result in plain legal prejudice to defendant. The court did not address plaintiff's argument that the federal court standard for admissibility of expert testimony established in



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1 Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589 (1993),
2 does not apply to her case.

3 III. DISCUSSION

4 A. Motion for Reconsideration

5 Local Rule 7(h) provides:

6 Motions for reconsideration are disfavored. The court
7 will ordinarily deny such motions in the absence of a
8 showing of manifest error in the prior ruling or a
9 showing of new facts or legal authority which could not
have been brought to its attention earlier with reason-
able diligence.

10 CR 7(h)(1). The rule requires filing of a motion for reconsider-
11 ation within ten judicial days following the order to which it
12 relates. See CR 7(h)(2).

13 The court sees no justification for granting plaintiff's
14 motion. First, plaintiff filed her motion several days late.
15 See CR 7(h)(2) (failure to comply with procedure and timing rules
16 may be grounds for denial). Second, the court finds no showing
17 of either manifest error or new facts or legal authority. The
18 only "new fact" entails the MDL defendants' challenge to plain-
19 tiff's experts pursuant to Daubert. However, this fact was not
20 new to the court at the time of its order and, as discussed
21 below, the court rejects the assertion that the Daubert eviden-
22 tiary standard does not apply to plaintiff's case.

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24 B. Motion to Strike Daubert Motion as to Plaintiff's Claim

25 Plaintiff argues that Daubert does not apply to her case
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1 given the Arizona Supreme Court's ruling in Logerquist v. McVey,
2 196 Ariz. 470, 1 P.3d 113 (Ariz. 2000). In that case, the court
3 ruled that Arizona courts would continue to apply Arizona Rule of
4 Evidence 702 and the pre-Daubert standard articulated in Frye v.
5 United States, 293 F. 1013, 1014 (D.C. Cir. 1923). See 1 P.3d at
6 132-33.

7 The court finds plaintiff's argument unavailing. Logerquist
8 establishes nothing more than the fact that Arizona courts will
9 not apply the Daubert standard. Plaintiff's case resides in
10 federal court. Plaintiff fails to provide any case law support-
11 ing the idea that a federal court may not apply Daubert in a
12 diversity case simply because the underlying cause of action
13 rests on the law of a state which does not follow Daubert.
14

15 Moreover, plaintiff's concerns regarding the application of
16 Daubert to her case are likely no longer an issue. On April 4,
17 2003, the court issued a preliminary ruling on defendants'
18 Daubert challenge, including a finding of admissibility for
19 expert testimony based on the Yale hemorrhagic stroke project and
20 related to hemorrhagic strokes occurring in adult women. As an
21 adult female alleging that PPA consumption resulted in a cerebral
22 hemorrhage, plaintiff falls within that finding of admissibility.

23 III. CONCLUSION

24 For the reasons stated above, the court hereby DENIES
25 plaintiff's motion for reconsideration or, alternatively, to
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1 strike defendants' Daubert motion as to her claim.

2 DATED at Seattle, Washington this 21st day of April, 2003.

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4 BARBARA JACOBS ROTHSTEIN
5 UNITED STATES DISTRICT JUDGE
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